

mentioned in sections 4003(c)(1)(C), 4008(a)(2), 4008(a)(3)(C), 4008(g)(1) and 4009(a) of RCRA, all of which reference the availability of federal funds and technical assistance for solid waste planning and management activities by municipalities. It is therefore the Agency's interpretation of these provisions that Congress intended to provide that tribes could receive federal funding and assistance for solid waste planning and management activities when available in the same manner as municipal governments, but that Congress did not otherwise intend to limit the scope of tribal regulatory authority over solid waste management in Indian country. In other words, absent an indication from Congress to the contrary, EPA believes that inclusion of Indian tribes in the definition of "municipality" was merely a definitional expedient used to avoid having to include the phrase "or an Indian tribe or authorized tribal organization or Alaska Native village or organization" wherever the term "municipality" appeared, not to change the sovereign status of tribes for RCRA purposes.

Another comment cites Sutherland on Statutory Construction § 46.01 (5th ed. 1992) for the principle that "unless the defendants can demonstrate that the natural and customary import of the statute's language is either repugnant to the general purview of the act or for some other compelling reason should be disregarded, the court must give effect to the statute's plain meaning." First, as discussed above, EPA believes that the language of RCRA contains no "plain meaning" with respect to jurisdiction over solid waste management in Indian country. Second, EPA believes that federal Indian law and EPA's Indian Policy provide a sufficiently "compelling reason" to overcome the inference that states have jurisdiction over solid waste management in Indian country that the commenter would draw from the statutory definition of "State" and "municipality".

Many references are made to "local governments" or "local authorities" in RCRA. See, e.g., sections 4006(a); 4006(b); 4006(c)(2). One commenter argued that the term "municipality" should be substituted for these references, and that tribes should be treated the same as municipalities for all purposes of RCRA Subtitle D. This would result in Indian tribes being brought under state control for the purposes of section 4006, which specifies procedures for the development and implementation of state solid waste plans. EPA believes, however, that these terms were not

intended to include Indian tribes. The term "municipality" could have easily been used instead of these references. By contrast, the term "municipality," which by definition includes Indian tribes, is used with reference to the availability of federal funds and technical assistance for solid waste planning and management activities. Thus, EPA believes that Congress did not intend to refer to Indian tribes and local governments interchangeably nor to affect the sovereign status of tribes in such an indirect way in RCRA.

It is a reasonable interpretation of RCRA that the use of the explicitly defined term "municipality" was limited to those areas that Congress wanted to apply to both local governments and Indian tribes, while the terms "local governments" or "local authorities" were used for those provisions that were to apply to local governments and not to Indian tribes. As discussed above, however, it is a reasonable interpretation of RCRA that Congress did not intend, simply by defining "municipality" to include tribes, to abrogate Indian sovereignty and subject all solid waste management activities in Indian country to state regulatory authority.

An examination of the legislative history of RCRA further supports EPA's position that Congress did not directly address the management of solid waste in Indian country. The first Solid Waste Disposal Act did not define "municipality." Solid Waste Disposal Act (SWDA), Pub. L. No. 89-272, Title III Sec. 203, 79 Stat. 983, 990-991 (1965). The definition of municipality was added by the Resource Recovery Act of 1970, and included "Indian tribe". Pub. L. No. 91-512, Title I Sec. 102, 84 Stat. 1227, 1228 (1970). Congress then enacted the Resource Conservation and Recovery Act of 1976, which contains the definition of "municipality" currently in the statute, adding "or authorized tribal organization or Alaska Native village or organization". Pub. L. No. 94-580, Title II, Sec. 1004, 90 Stat. 2795, 2800 (1976). There is no legislative history explaining why Congress included Indian tribes and other Indian organizations in the definition of "municipality". See H.R. Rep. No. 1155, 91st Cong., 2d Sess., reprinted in 1970 U.S.C.A.N. 4552; S. Rep. No. 1034, 91st Cong., 2d Sess. 27, (1970); H.R. Conf. Rep. No. 1579, 91st Cong., 2d Sess., reprinted in 1970 U.S.C.A.N. 4559; H.R. Rep. No. 1491, 94th Cong., 2d Sess., reprinted in 1976 U.S.C.A.N. 6238; S. Rep. No. 869, 94th Cong., 2d Sess. 1 (1976); S. Rep. No. 988, 94th Cong., 2d Sess. 1 (1976).

There is no further mention of the definitions or of the role of tribes in the legislative history of RCRA. There is also no indication in the legislative history that Congress ever attempted to conduct an examination of the social, legal and political ramifications that the submission of tribes to state regulatory authority in the area of hazardous waste management would occasion. The fact that Congress did not conduct such an examination or otherwise directly address the precise issue in the legislative history supports EPA's contention that Congress did not in fact have a specific intent with regard to implementation of RCRA in Indian country.

As mentioned above, principles of federal Indian law also support the Agency's interpretation of RCRA under *Chevron*. Federal Indian law mandates that a statute be construed liberally in favor of Indians. See *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766-767 (1985), and *Washington*, 752 F.2d at 1469-1470. Liberally construed in favor of the states, the inclusion of Indian tribes in the definition of "municipality" might constitute an *implicit* argument for the limitation of Indian sovereignty, but the Agency is obligated to read RCRA in favor of tribal authority and to uphold the principles of tribal sovereignty unless Congressional directives to the contrary are clearly expressed.

The commenter seeks to read into an ambiguous statute Congressional intent to deny tribes a significant regulatory authority. This is inconsistent with federal Indian law, as discussed above. EPA cannot assume that Congress, by including Indian tribes in the definition of "municipality" in RCRA section 1004(13), intended to submit the sovereign authority of the various Indian tribes throughout the nation to that of the various states in which they reside for the purposes of RCRA. Neither the statutory text nor the legislative history of RCRA support this reading of the statute.

One commenter supported the conclusion that, as a general rule, Indian tribes that are sovereign nations are not subject to state solid waste management requirements. This commenter stated that courts will permit state requirements to extend to sovereign tribal lands only if the state interests clearly outweigh tribal and federal interests, and that the U.S. Supreme Court has rarely found such interests to exist. This is consistent with EPA's analysis of federal Indian law, discussed above.

Another commenter argued that EPA's proposal to treat Indian tribes in the